

## **Legislative Bulletin.....February 23, 2009**

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### **H.R. 44—Guam World War II Loyalty Recognition Act (*Bordallo, D-Guam*)**

**Order of Business:** The bill is scheduled to be considered on February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 1595) was considered in the 110<sup>th</sup> Congress and passed by a vote of 288 – 133 on May 8, 2007.

**Summary:** H.R. 44 would recognize the suffering of residents of Guam on account of their United States nationality during the invasion and occupation by Imperial Japan during World War II. It would also express the eternal gratitude to the residents of Guam for their loyalty and bravery while they were occupied by Imperial Japan.

The bill would direct the Secretary of Treasury to make payments to residents of Guam who suffered death, personal injury, forced labor, or internment. For this purpose, H.R. 44 would authorize \$126 million over five years. Survivors of residents who died in the war would receive \$25,000. Residents who suffered rape or severe personal injury, such as the loss of a limb, would receive \$15,000. A resident that was subject to forced labor or suffered injuries such as scarring or burning would receive \$12,000. Residents who suffered forced marches or internment, or were forced to hide to avoid internment, would receive \$10,000.

If a resident had been subject to personal injury but was no longer alive to receive payment then the sum of \$7,000 would be dispersed to the resident's spouse, children, or parents. If no such relations are alive than no money would be dispersed.

The Foreign Claims Settlement Service would be responsible for adjudicating the claims and determining eligibility. All claims must be filed within one year after the Foreign Claims Settlement Service published a notice of the filling period. The notice would be publicized in newspapers, radio, and television media in Guam.

H.R. 44 would also authorize \$5 million over five years for the Secretary of Interior to **create a new grant program** that would award grants research, educational, and media activities that memorialize the events surrounding the occupation of Guam.

**Addition Information:** On December 10, 1941, the U.S. territory of Guam fell to the Japanese, becoming the first American territory lost in World War II. According to the Department of Interior, in the months that followed, some 10,000 to 15,000 residents of Guam were forced to march to concentration camps in the central and southern jungles. Men, women, and children over the age of 12 were forced to build airfields, military installations, and bunkers. The people of Guam lived under the rule of the Imperial Japanese Navy until the island was liberated by the United States in July 1944.

In November of 1945, just three months after the defeat of Imperial Japan, the United States Congress passed the [Guam Meritorious Claims Act of 1945](#). The legislation was crafted for the purpose of “granting immediate relief to the residents of Guam by the prompt settlement of meritorious claims arising in Guam.” Under the bill, the Secretary of the Navy was directed to establish claim commissions to determine just compensation for physical and property damages suffered by the resident of Guam and to implement the best strategy for dispersing the money.

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on Insular Affairs, Oceans and Wildlife, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy (SAP) is available.

**Cost to Taxpayers:** CBO score for H.R. 44 is not available, but the bill would authorize \$131 million over a five year period.

**Possible Conservative Concerns:** Some conservatives may be concerned that the bill authorizes \$126 million in reparations to family members of residents of Guam who experienced suffering at the hands of our *enemy* in WWII, Japan, and not because of a policy or action of the United States Government.

**Does the Bill Expand the Size and Scope of the Federal Government?** Yes, H.R. 44 creates a new federal grant program.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** A Committee Report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. Such a report is technically not required because the bill is being considered under a suspension of the rules.

**Constitutional Authority:** A Committee Report citing constitutional authority is not available.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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### **H.R. 80—Captive Primate Safety Act (*Blumenauer, D-OR*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 2964) was considered in the 110<sup>th</sup> Congress and passed by a vote of 302 – 96 on June 17, 2008.

**Summary:** H.R. 80 would add “nonhuman-primates” (monkeys and apes) to the list of prohibited species under the Lacey Act Amendments of 1981. The bill would make it illegal to import, export, transport, sell, receive, acquire, or purchase any nonhuman primate between states or internationally.

The bill would exempt certain entities, such as research facilities, importers, exhibitors, and dealers that already obtain licenses or registrations to transport nonhuman primates under the Animal Welfare Act. In addition, H.R. 80 would make exceptions for persons transporting nonhuman primates for the purpose of taking the animal to a qualified veterinarian. The bill would also make an exception for a person transporting a nonhuman primate for the purpose of taking the animal to a new caregiver in the event of an owner’s death. In either scenario, the person transporting the nonhuman primate would have to do so in a secure enclosure and must carry legal documentation authorizing the transport of the animal.

H.R. 80 would also authorize \$5 million in FY 2009 to supplement the increased cost of the Department of the Interior (DOI), operating through the U.S. Fish and Wildlife Service, to enforce these new laws. In addition, CBO estimates that it will cost an additional \$4 million each fiscal year to supply the U.S. Fish and Wildlife Service with law enforcement personnel needed to enforce the law.

**Additional Background:** According to the Humane Society and a variety of other sources, there are approximately 15,000 nonhuman primates in private captivity in the U.S. today. Nonhuman primates that are currently owned as pets are bred in the U.S. and sold by breeders that are licensed and regulated by the Department of Agriculture (USDA). According to supporters of H.R. 80, captive nonhuman primates are often treated inhumanly and become dangerous to humans. In addition, proponents of the legislation argue that captive primates pose a risk of spreading dangerous infectious diseases to humans such as herpes or tuberculosis.

However, according to a letter of dissenting views that was sent to the Committee on Natural Resources regarding identical legislation considered in the 110<sup>th</sup> Congress, the actual risk of pet primates harming humans is minute. The letter points out that, according to the Captive Wild Animal Protection Coalition, only 132 people have been injured by primates in the past **ten years**, and 40% of those attacks occurred in laboratories. Dog attacks, by comparison, result in almost 300,000 trips to the hospital annually. In addition, the letter quotes testimony from Dr. Sian Evans, the Director of the DuMond Conservancy for Primates and Tropical Forests, who states, “Pet primates are not a documented source of disease for humans. There is no documentation or scientific evidence to support these claims.”

In a June 16, 2008, letter to the Committee on Natural Resources’ Chairman Nick Rahall, the Assistant Secretary for Fish, Wildlife and Parks at DOI raised a number of concerns with this legislation and stated that the Bush Administration was opposed to the bill’s passage. Among other things, the DOI expressed its concern that adding nonhuman primates to the prohibited wildlife species list could jeopardize the DOI’s ability to enforce similar laws concerning higher priority captive animals, such as live lions, tigers, cheetahs, or cougars. In addition, the DOI contended that many of the increased regulations on nonhuman primate transportation would be duplicative, as many monkeys and apes in the U.S. are protected by the Animal Welfare Act (AWA) and the Endangered Species Act. Finally, the DOI believed that the bill may have the unintended consequence of increasing the number of abandoned primates in the U.S. by making it illegal for an individual who has a nonhuman primate as a service animal or a pet to bring the animal with them if they move outside the state.

According to the DOI’s letter, laws concerning nonhuman primate ownership would be better addressed through a different agency or at the local level in order to avoid creating costly, unnecessary, and potentially damagingly duplicative laws. The agency’s letter states:

A better approach, in our view, would be for Congress to work with the Department of Agriculture to identify a suitable way to address any public safety and humane treatment concerns associated with possessing Animal Welfare Act regulated non-human primates through a more suitable legislative vehicle. Private pet ownership concerns may be best addressed through state laws that currently address these issues.

Currently, 40 states have laws that either outright prohibit the private ownership of nonhuman primates or require owners to obtain permits to possess the animals.

**Possible Conservative Concerns:** Some conservatives may be concerned that H.R. 80 would authorize \$5 million in FY 2009 and \$20 million over the FY 2009—FY 2013 period to pay for the Department of Interior (DOI) to enforce new laws that prohibit the transfer of nonhuman primates for the purpose of interstate or foreign commerce. Some conservatives may be concerned that the prohibition may be duplicative of other regulations that are currently carried out by other federal agencies, namely the Department of Agriculture (USDA).

In addition, some conservatives may be concerned that H.R. 80 could be seen as an unnecessary expansion of federal government regulations because nonhuman primate pets pose very little threat to humans and are closely regulated by the states and other agencies. Some conservatives may believe, as the DOI has argued, that regulations regarding the ownership of nonhuman primates are better determined by state governments and the USDA.

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on Insular Affairs, Oceans and Wildlife, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy (SAP) is available. However, the Bush Administration was opposed to identical legislation considered in the 110<sup>th</sup> Congress.

**Cost to Taxpayers:** While no official cost estimate is available for H.R. 80, CBO estimated that implementing identical legislation in the 110<sup>th</sup> Congress would authorize \$5 million in FY 2009 and \$20 million over the FY 2009—FY 2013 period.

**Does the Bill Expand the Size and Scope of the Federal Government?** Yes, the bill would make it illegal to transport nonhuman primates for the purpose of interstate or foreign commerce and increase the number of enforcement personnel at the Department of the Interior to enforce the prohibition.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?** Yes. According to CBO, identical legislation considered in the 110<sup>th</sup> Congress would have imposed private sector mandates by prohibiting any person from importing, exporting, transporting, selling, receiving, acquiring, or purchasing nonhuman primates in interstate or foreign commerce. According to CBO, “the local direct cost of complying with the mandate would fall well below the annual threshold established in UMRA for private-sector mandates (\$136 million in 2008, adjusted for inflation).”

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** A Committee Report citing compliance with rules regarding earmarks, limited tax benefits, or limited tariff benefits is not available. Such a report is technically not required because the bill is being considered under a suspension of the rules.

**Constitutional Authority:** A Committee Report citing constitutional authority is not available.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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## **H.R. 714—Authorizes the Secretary of the Interior to lease certain lands in Virgin Islands National Park, and for other purposes (*Christensen, D-VI*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 1143) was considered in the 110<sup>th</sup> Congress and passed by a vote of 378 – 0 on March 4, 2008.

**Summary:** H.R. 714 would authorize the Secretary of Interior to lease certain lands in Virgin Island National Park to the Caneel Bay Resort on the island of St. John. The bill would require that the lease agreement:

- Requires the resort to maintain and operate the land in a manner consistent with the preservation and conservation objectives of the park.
- Does not exceed 40 years.
- Prohibits any transfer of the land without approval of the Secretary of the Interior.
- Prohibits any increase in the number of guest accommodations.
- Prohibits any increase in the overall size of the resort.
- Prohibits the sale of timeshares in the resort.
- Facilitates the transfer of all property to the federal government at the end of the lease.

H.R. 714 would also require the resort to pay the U.S. government a fair market value rent based on an appraisal conducted pursuant to the Uniform Appraisal Standards for Federal Land Acquisition. Eighty percent of the resort's payments would be given to the Department of Interior, while the remaining twenty percent would be deposited in the U.S. Treasury.

**Additional Background:** The Caneel Bay Resort currently maintains a luxury resort within the Virgin Island National Park pursuant to a Retained Use Estate (RUE) through 2023. When the RUE expires, all the resort's land and property will revert back to the federal government. The resort is currently undertaking a major renovation and improvement project that would significantly increase the value of the resort. The current RUE holder, CBI Acquisitions, LLC, has complained that the length of the RUE does not provide enough time for the resort to retain long-term financing for the improvements. This bill would allow the Secretary of Interior to enter into a lease with the RUE holder for up to 40 years, through 2048.

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on Insular Affairs, Oceans and Wildlife, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy (SAP) is available.

**Cost to Taxpayers:** According to CBO, identical legislation (H.R.1143) considered in the 110<sup>th</sup> Congress would increase offsetting receipts by requiring lease payments and increase direct spending as those payments are spent by the federal government. CBO estimates that the net effect on the budget would be “negligible.”

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** A Committee Report citing constitutional authority is not available.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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## **H.Res. 132—Honoring the life and memory of the Chiricahua Apache leader Goyathlay, also known as Geronimo (*Rep. Grijalva D-AZ*)**

**Order of Business:** The bill is scheduled to be considered on Tuesday, February 23, 2009, under a motion to suspend the rules and pass the bill.

**Summary:** H.Res. 132 would express that the House of Representatives:

- “Honors the life of Goyathlay, his extraordinary bravery, and his commitment to the defense of his homeland, his people, and Apache ways of life; and
- “Recognizes the 100 anniversary of the death of Goyathlay as a time of reflection of his deeds on behalf of his people.”

The resolution lists a number of findings including:

- “Goyathlay or Goyaale, called Geronimo by the soldiers against whom he fought, was born in June 1829 to the Bedonkohe band of the Apache people in No-Doyohn Canyon on the Gila River, which was then part of Mexico;

- “In 1858, Mexican soldiers attacked the Bedonkohe people within the current borders of Mexico, setting in motion a war between that nation and the Apache that would last for three decades;
- “Goyathlay, a spiritual and intellectual leader, became recognized as a great military leader by his people because of his courage, determination, and skill;
- “Goyathlay led his people in a war of self-defense as their homeland was invaded by the citizens and armies first of Mexico, and then of the United States;
- “That homeland was healthy, thriving, and beautiful with ample running water, extensive grasslands, and ancient forests and was a place beloved and revered by the Apache people, who had lived there for countless generations;
- “Goyathlay's band, along with other Apache peoples, were forcibly removed by the United States Army, interned at San Carlos, Arizona, subjugated, and deprived of their rights as a free people, including the right to practice their traditional spiritual beliefs and maintain long-standing political and social structures;
- “Goyathlay led fewer than 150 men, women, and children out of captivity and for several years evaded fighting forces consisting of one-quarter of the standing United States Army, as well as thousands of Mexican soldiers;
- “Upon surrendering to United States forces, Goyathlay and his band were promised a return to their homeland but were instead interned in military prisons in Florida and Alabama, far from their homeland;
- “Goyathlay, promised respect as a prisoner of war, was put to hard labor for eight years;
- “Goyathlay and other Apache prisoners of war were removed to Fort Sill, Oklahoma, in 1894;
- “After his death on February 17, 1909, Goyathlay was not granted the promised return to his homeland but instead was buried in the military cemetery at Fort Sill;
- “Goyathlay's byname, ‘Geronimo’, became a war cry uttered by paratroopers fighting against the totalitarian enemies of the United States during World War II, a name used with respect and honor for a great warrior and leader;
- “To this day, the Apache people continue to honor and hold sacred what Goyathlay represented to a people separated and destroyed by historic and disruptive United States governmental policies of the past; and
- “There still exists a need for spiritual healing among Apache people, stemming from the captivity and mistreatment of their ancestors under past policies of the United States Government, that can commence by honoring the memory of Goyathlay and his valiant efforts to preserve traditional Apache ways of life and the health of Ni'godza'n, the Earth:”

**Committee Action:** On February 4, 2009, the bill was referred to the Committee on Natural Resources, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy (SAP) is available.

**Cost to Taxpayers:** The resolution would not authorize any additional expenditures.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there's no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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## **H.R.601—Box Elder Utah Land Conveyance Act (Bishop R-UT)**

**Order of Business:** The bill is scheduled to be considered on Tuesday February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 3849) was considered in the 110<sup>th</sup> Congress and passed by voice vote on September 22, 2008.

**Summary:** Requires the Secretary of Agriculture to convey to the town of Mantua, Utah, 31.5 acres of National Forest System lands in the Wasatch-Cache National Forest.

**Additional Background:** The conveyed land will be used by the town to develop a new city cemetery, a new town hall and fire station, an elementary school, court and law enforcement facilities, and a memorial park.

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on National Parks, Forests, and Public Lands, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy was provided.

**Cost to Taxpayers:** According to CBO, identical legislation considered in the 110<sup>th</sup> Congress would have no significant effect on discretionary spending and no effect on direct spending or revenues.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there's no

accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable for H.R. 601.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720

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## **H.R. 603—Utah National Guard Readiness Act (Bishop R-UT)**

**Order of Business:** The bill is scheduled to be considered on Tuesday February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 3651) was considered in the 110<sup>th</sup> Congress and passed by voice vote on March 31, 2008.

**Summary:** H.R. 603 directs the Bureau of Land Management (BLM) to convey, without consideration, about 430 acres of land in Utah to the state. The conveyed property would be used by Utah for activities of the state national guard.

**Additional Background:** According to the sponsor's office, "the Utah National Guard is one of only a few states that have met its recruiting and retention goals for the past several years. As a result, the Utah Guard is expected to grow by several hundred personnel positions over the next few years. Camp Williams is the existing headquarters of the Utah National Guard and the main cantonment area was planned and developed in the 1940s and sits on lands owned by the State of Utah. In order to accommodate future expansion needs identified in its master plan for the main cantonment area, the Utah Guard must acquire ownership of contiguous lands already within the existing boundaries of Camp Williams which are technically owned by the federal government.

"HR 603 would transfer fee ownership of approximately 431 acres of federal land at Camp Williams, under the administrative control of the Bureau of Land Management of the Department of the Interior, to the Utah National, as identified in the Guard's master plan. The legislation will also help consolidate checkerboard land ownership patterns in the area leading to more efficient management of the affected lands. The transfer is subject to a reverter that the lands must be used for National Guard or defense purposes."

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on National Parks, Forests, and Public Lands, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy was provided.

**Cost to Taxpayers:** According to CBO, implementing identical legislation in the 110<sup>th</sup> Congress “would have no effect on the federal budget. The land to be conveyed to Utah is already reserved for military purposes of the U.S. Army and the Utah National Guard and does not produce income for the federal government.

**Does the Bill Expand the Size and Scope of the Federal Government?:** No.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable for H.R. 603.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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## **H.R. 637—South Orange County Recycled Water Enhancement Act (Calvert, R-CA)**

**Order of Business:** The bill is scheduled to be considered on Tuesday February 23, 2009, under a motion to suspend the rules and pass the bill.

**Major Changes Since the Last Time This Legislation Was Before the House:** None. Identical legislation (H.R. 1140) was considered in the 110<sup>th</sup> Congress and passed by voice vote on May 5, 2007.

**Summary:** H.R. 637 would authorize the Secretary of the Interior to cooperate with the City of San Juan Capistrano, in the planning, design, and construction of an advanced water treatment plant facility and recycled water system. H.R. 1140 would authorize \$18.5 million for the local water project.

H.R. 637 would also authorize \$18.5 million over ten years for the Secretary of the Interior to cooperate with the San Clemente, California, in the planning, design, and construction of a project to expand reclaimed water distribution, storage and treatment facilities. The legislation prohibits the Secretary from providing more than 25 percent of funds or the operation and maintenance of either project. The authority of the Secretary to carry out any provisions would terminate after ten years.

**Additional Background:** According to the South Orange County Integrated Regional Water Management Plan, “the region has transitioned to one of the fastest growing areas of urban development in the State. Cities, once only sleepy rural communities, have become burgeoning urban centers. And the population, which just a few years ago numbered a few thousand residents, has now exploded to more than 500,000.” The plan suggests that new facilities will diversify the mix of water supplies and can help to meet South Orange County’s water needs through “developing local sources such as recycled water, groundwater and ocean water”. For more information on the plan visit this [website](#).

**Committee Action:** On February 4, 2009, the bill was referred to the Natural Resources subcommittee on Water and Power, which took no subsequent public action.

**Administration Position:** No Statement of Administration Policy was provided.

**Cost to Taxpayers:** A CBO score for H.R. 637 is not available.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill creates a new local water project.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** Though the bill contains no earmarks, and there’s no accompanying committee report, the earmarks rule (House Rule XXI, Clause 9(a)) does not apply, by definition, to legislation considered under suspension of the rules.

**Constitutional Authority:** A committee report citing constitutional authority is unavailable for H.R. 637.

**RSC Staff Contact:** Bruce F. Miller, [bruce.miller@mail.house.gov](mailto:bruce.miller@mail.house.gov), (202)-226-9720.

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## **H.R. 911— Stop Child Abuse in Residential Programs for Teens Act of 2009 (*Miller, D-CA*)**

**Order of Business:** H.R. 911 is scheduled to be considered on Monday, February 23, 2009, under a motion to suspend the rules and pass the bill.

**Background:** H.R. 911 is similar to H.R. 6358, an amended version of H.R. 5876, which passed the House of Representatives in the 110<sup>th</sup> Congress by a vote of [318-103](#). In the 110<sup>th</sup> Congress, upon Republicans offering the Motion to Recommit to H.R. 5876, the Democrats pulled the bill from floor consideration. Rep. Miller then introduced H.R. 6358, which built upon H.R. 5876 by including the Manager’s Amendment, which passed by a vote of 422-0, **but did not include** the Republican Motion to Recommit (MTR)

which would have included more stringent parental notification requirements. The MTR would require that a covered facility under the bill create a policy to ensure that parental consent is required before any prescription medication (including contraception), not previously disclosed in writing by such parents or legal guardians, may be dispensed to a child. Mr. Hoekstra offered the same amendment in Committee this year. It was defeated by a vote of [16-25](#).

The Manager's Amendment to H.R. 6358 made three changes to the definition of "covered program" under H.R. 5876. It expanded the definition to include public residential programs, and it struck the exclusion of psychiatric residential treatment facilities and the exclusion of foster care group homes. Among other things, the amendment struck Section 5 (private right of action). The amendment required the Secretary to report to Congress on the activities of the national toll-free hotline, directed the Secretary to conduct a study on the outcomes of residential programs, and amended one of the standards to require a timeline about notifying parents.

The changes listed below addressed some of the initial concerns of the Ranking Member and other Republicans. According to a document released by the Education and Labor Committee Minority staff, the following concerns were addressed:

**State-Based Regulatory Structure.** "The Stop Child Abuse at Residential Programs for Teens Act, as originally introduced had called for parallel regulatory and enforcement systems at the federal and state levels, with cumbersome and intrusive federal involvement in private programs that are rightly governed by state child protection laws. Marking a considerable improvement, in the revised bill:

- "The federal government will not undertake biennial site visits of covered facilities, a requirement that would have been costly and impractical.
- "The federal government will not be responsible for investigating and enforcing allegations of abuse at such facilities, unless cases are referred by the states.

**No More Trial Lawyer Handouts.** The original legislation created a new private right of action to sue in federal court, an invitation for trial lawyers to try to capitalize on potential cases of abuse.

- "There is no new right-to-sue created specifically to benefit trial lawyers. Victims of abuse retain their right to seek remedies in the courts, but the focus is on prevention and protection, instead of litigation.

**Stronger Protections for Youth.** "The Stop Child Abuse at Residential Programs for Teens Act, as originally drafted contained incomplete protections for the young people in these programs, covering only private facilities while ignoring proven cases of abuse and mistreatment at public programs. The revised bill ensures that:

- “Both public and private facilities are covered under the state-based abuse prevention structure included in the bill, ensuring equal protections for young people being treated in residential facilities.
- “The bill also maintains the same strong background check requirements to ensure that individuals treating vulnerable youth are thoroughly vetted.”

**Summary:** The intention of this legislation is to protect youth who are enrolled in public and private residential treatment programs from abuse, neglect, and the loss of life. According to the bill, residential treatment programs include programs offering wilderness therapies to boot camp-like programs, and many others. The programs are intended to serve troubled teens with behavioral or emotional problems. Hospitals licensed by the state, foster family and/or group homes, or psychiatric residential treatment facilities are not considered treatment programs under the bill and would not receive funding for child abuse prevention.

H.R. 911 directs the Assistant Secretary for Children and Families of the Department of Health and Human Services to require that each location of a treatment program, in order to provide for the basic health and safety of children at such a program, meet the following minimum standards:

- a) “Child abuse and neglect shall be prohibited;
- b) “Disciplinary techniques or other practices that involve the withholding of essential food, water, clothing, shelter, or medical care necessary to maintain physical health, mental health, and general safety, shall be prohibited;
- c) “The protection and promotion of the right of each child at such a program to be free from physical and mechanical restraints and seclusion (as such terms are defined in section 595 of the Public Health Service Act (42 U.S.C. 290jj)) to the same extent and in the same manner as a non-medical, community-based facility for children and youth is required to protect and promote the right of its residents to be free from such restraints and seclusion under such section 595, including the prohibitions and limitations described in subsection (b)(3) of such section;
- d) “Acts of physical or mental abuse designed to humiliate, degrade, or undermine a child’s self-respect shall be prohibited;
- e) “Each child at such a program shall have reasonable access to a telephone, and be informed of their right to such access, for making and receiving phone calls with as much privacy as possible, and shall have access to the appropriate State or local child abuse reporting hotline number, and the national hotline number referred to in subsection (c)(2);
- f) “Each staff member, including volunteers, at such a program shall be required, as a condition of employment, to become familiar with what constitutes child abuse and neglect, as defined by State law;

- g) “Each staff member, including volunteers, at such a program shall be required, as a condition of employment, to become familiar with the requirements, including with State law relating to mandated reporters, and procedures for reporting child abuse and neglect in the State in which such a program is located;
- h) “Full disclosure, in writing, of staff qualifications and their roles and responsibilities at such program, including medical, emergency response, and mental health training, to parents or legal guardians of children at such a program, including providing information on any staff changes, including changes to any staff member’s qualifications, roles, or responsibilities, not later than 10 days after such changes occur;
- i) “Each staff member at a covered program described in subclause (I) or (II) of section 2(4)(A)(i) shall be required, as a condition of employment, to be familiar with the signs, symptoms, and appropriate responses associated with heatstroke, dehydration, and hypothermia;
- j) “Each staff member, including volunteers, shall be required, as a condition of employment, to submit to a criminal history check, including a name-based search of the National Sex Offender Registry established pursuant to the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248; 42 U.S.C. 16901 et seq.), a search of the State criminal registry or repository in the State in which the covered program is operating, and a Federal Bureau of Investigation fingerprint check. An individual shall be ineligible to serve in a position with any contact with children at a covered program if any such record check reveals a felony conviction for child abuse or neglect, spousal abuse, a crime against children (including child pornography), or a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault or battery;
- k) “Policies and procedures for the provision of emergency medical care, including policies for staff protocols for implementing emergency responses;
- l) “All promotional and informational materials produced by such a program shall include a hyperlink to or the URL address of the website created by the Assistant Secretary pursuant to subsection (c)(1)(A);
- m) “Policies to require parents or legal guardians of a child attending such a program to notify, in writing, such program of any medication the child is taking; to be notified within 24 hours of any changes to the child’s medical treatment and the reason for such change; and to be notified within 24 hours of any missed dosage of prescribed medication;
- n) “Procedures for notifying immediately, to the maximum extent practicable, but not later than within 48 hours, parents or legal guardians with children at such a program of any--on-site investigation of a report of child abuse and neglect; violation of the

health and safety standards described in this paragraph; and violation of State licensing standards developed pursuant to section 114(b)(1) of the Child Abuse Prevention and Treatment Act, as added by section 7 of this Act.

- o) “Other standards the Assistant Secretary determines appropriate to provide for the basic health and safety of children at such a program.”

The bill would require the Secretary to create penalties for violations of the standards required under federal law. Such penalties under the bill could include a civil penalty of \$50,000 per violation (with all funds collected going to the U.S. Treasury).

The bill would require that the Secretary establish, maintain, and disseminate information about the treatment center violations on a website—clearly displaying the history of the violations for the public; the treatment facilities current status; any deaths that occurred; any owner or operator violation; and any penalties incurred due to violations.

Furthermore, the Assistant Secretary would be required to report on “best practices for helping adolescents with mental health disorders, conditions, behavioral challenges, or alcohol or substance abuse.”

The bill requires that the Secretary establishes a hotline to issue complaints, and then a process to ensure that such complaints of child abuse and neglect received by the hotline are promptly reviewed by “persons with expertise” in evaluating such complaints. The Secretary must then notify the state, appropriate law enforcement, and the appropriate protection and advocacy groups. The Secretary would also be responsible for the investigation into any complaint, and must ensure the collaboration and cooperation of the hotline and with other hotlines around the country.

The bill gives the Secretary the authority to refer any violations to the Attorney General (AG) for “appropriate action.” If the Secretary doesn’t refer to the AG, the AG still has the authority to “sua sponte, file a complaint in any court of competent jurisdiction seeking equitable relief or any other relief authorized by this Act for such violation.”

H.R.911 would also require that the Secretary issue a report to Congress including the following:

- (1) a summary of findings from on-going reviews conducted by the Assistant Secretary pursuant to section 3(b)(1), including a description of the number and types of covered programs investigated by the Assistant Secretary pursuant to such section;
- (2) a description of types of violations of health and safety standards found by the Assistant Secretary and any penalties assessed;
- (3) a summary of State progress in meeting the requirements of this Act, including the requirements under section 114 of the Child Abuse Prevention and Treatment Act, as added by section 7 of this Act;

- (4) a summary of the Secretary's oversight activities and findings conducted pursuant to subsection (d) of such section 114; and
- (5) a description of the activities undertaken by the national toll-free telephone hotline established pursuant to section 3(c)(2)

Under the bill, in order for a state to receive a grant for prevention enforcement or receive Child Abuse Prevention and Treatment Act (CAPTA) funding, among other things, the state must:

- Develop policies and procedures to prevent child abuse and neglect at covered programs;
- Develop policies and procedures to monitor and enforce compliance with the licensing requirements developed under the bill including disclosing all information regarding abuse, conducting unannounced site visits, and creating a database to report child abuse;
- Develop policies and procedures for establishing and maintaining a publicly available database of all covered programs operating in the State; and
- Annually submit to the Secretary a report that includes information about all of their covered programs and monitoring techniques.

The bill authorizes \$15 million for each fiscal year 2010 – 2014 for standards and enforcement, and \$235 million for each fiscal year 2010 – 2014 for the grant program to states.

**Committee Action:** The bill was introduced on February 9, 2009 and referred to the House Committee on Education and Labor, which marked up the bill on February 11, 2009. The bill passed out of Committee by a vote of [32-10](#).

**Conservative Concerns:** Many conservatives may be concerned that the Hoekstra amendment (which was offered as a Motion to Recommit in the 110<sup>th</sup> Congress) was not included in the bill. The amendment would have required that a covered facility under the bill create a policy to ensure that parental consent is required before any prescription medication (including contraception), not previously disclosed in writing by such parents or legal guardians, may be dispensed to such child.

This legislation represents a large expansion of the oversight role of the federal government through the Department of Health and Human Services. Furthermore, it expands the Department's enforcement authority over all state procedures and monitoring efforts of residential treatment facilities—efforts that are already in effect. Many conservatives may be concerned that increased federal government oversight into state procedures may cause unnecessary conflict between the federal government and the states.

In addition, the bill would require that in order for a state to receive Child Abuse Prevention and Treatment Act (CAPTA) funding, they must implement very specific regulations and licensing standards. CAPTA, first enacted in 1974, was intended to create

a focal point in the federal government to identify and address issues of child abuse and neglect, and to support effective methods of prevention and treatment. This money is essential for states, and some may oppose it being tied to increased regulations and standards.

Furthermore, this bill authorizes \$250 million each year for five years to expand the authority of the federal government, and to implement programs which are already being run at the state level. With such a significant cost, some conservatives may be concerned that this legislation is being considered under suspension of the rules.

**Administration Position:** No Statement of Administration Policy for H.R. 911 was available at press time. However, the Bush Administration's Statement of Administration Policy on H.R. 5876, from the 110<sup>th</sup> Congress, states:

"The Administration strongly supports the overall goal of H.R. 5876, which is to protect children from child abuse and neglect in private facilities. However, the Administration is concerned that H.R. 5876, as reported by the Committee on Education and Labor, would drastically expand the oversight role and enforcement authority of the Federal Government in dealing with private residential programs for teens and potentially conflict and interfere with State enforcement procedures. For the reasons that follow, the Administration strongly opposes House passage of H.R. 5876."

**Cost to Taxpayers:** While no CBO estimate exists for H.R. 911, CBO estimated in the 110<sup>th</sup>, that H.R. 5876 authorizes the appropriation of \$250 million per year for fiscal years 2009 through 2013 for child abuse prevention programs. CBO estimated that implementing the bill would cost \$805 million over the 2009-2013 period, assuming appropriation of the authorized amounts. CBO also estimates that enacting H.R. 5876 would not affect direct spending. Furthermore, the bill would create new civil penalties, which CBO estimates would have an insignificant effect on revenues over the 2009-2018 period.

**Does the Bill Expand the Size and Scope of the Federal Government?:** Yes, the bill increases the role of the federal government by granting the Department of Health and Human Services the authority to regulate and enforce measures at state residential treatment programs to ensure the safety of the youth at such programs.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** No.

**Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** While no House Report exists for H.R. 911, the Education and Labor Committee, in [House Report 110-669](#), asserts that, "H.R. 5876 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clauses 9(d), 9(e) or 9(f) of rule XXI of the Rules of the House of Representatives."

**Constitutional Authority:** While no House Report exists for H.R. 911, the Education and Labor Committee, in [House Report 110-669](#), cites constitutional authority in Article I, section 8, clauses 1, 3 and 18 of the U.S. Constitution (Congress’ power to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers). **This constitutional authority statement fails to cite a foregoing power of Congress.** House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

Note: Article VI, Clause 3 of the U.S. Constitution states that, “The Senators and Representatives...and all executive and judicial Officers...shall be bound by Oath or Affirmation, to support this Constitution.”

**RSC Staff Contact:** Natalie Farr, [natalie.farr@mail.house.gov](mailto:natalie.farr@mail.house.gov), (202) 226-0718.